

DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CA06-392

February 14, 2007

L.E. JOHNSON

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F309180]

V.

TARGET, Constitution State Service
Company

AFFIRMED

APPELLEE

Appellant, L.E. Johnson, argues that the Arkansas Workers' Compensation Commission erred when it found that he failed to present objective evidence of an injury. We affirm.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2005). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). When a claimant appeals from the Commission's denial of a claim, we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief. *See, e.g., Powers v. City of Fayetteville*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 31, 2007). The Commission weighs the medical evidence, and if the evidence is

conflicting, the resolution of the conflict is a question of fact for the Commission. *Id.* Further, the Commission may accept or reject medical evidence, and it determines the probative force to assign to the evidence. *Id.*

The opinion of the administrative law judge (ALJ) noted appellant's testimony that he was a warehouseman working for appellee Target when, on August 19, 2003, he felt pain in his neck while lifting a pallet at work. The ALJ also noted that appellant's previous medical history included a back injury in 1977 when appellant was in the Army, motor-vehicle accidents in 1993 and 1999, and a pulled neck muscle in 2002. Further, the ALJ observed that MRI scans were performed on appellant—prior to the incident at work—on September 30, 2002, and November 30, 2002.

On August 28, 2003, following appellant's incident at work, a radiologist, Dr. David L. Harshfield, conducted an MRI scan of appellant's cervical spine, and on September 22, 2003, he compared it to the 2002 MRI scans. In describing Dr. Harshfield's findings, the ALJ stated that the comparison showed that appellant's condition was stable over the last three exams. The ALJ further noted the opinion of Dr. Harold Betton, who treated appellant and also reviewed the MRI scans. According to the ALJ, Dr. Betton opined that there was no evidence of a recent traumatic or acute injury. The ALJ concluded that appellant failed to present objective medical evidence to establish a compensable injury. The Commission adopted the ALJ's opinion.

Appellant contends that a comparison of the written report from the August 2003

MRI with the written reports from the 2002 MRIs shows marked changes to his cervical spine, constituting objective evidence. We note, however, that Drs. Betton and Harshfield compared the MRI scans. In doing so, Dr. Harshfield concluded that the “multilevel spondyloarthropathic changes of the mid and lower cervical disc levels remain morphologically stable over the course of the last three MRI studies including the initial exam of 9-30-02, with subsequent examinations of 11-15-02 and the most recent dated 8-28-03.” And Dr. Betton opined that there was no objective evidence of a neck injury. While appellant asserts that Dr. Betton contradicted himself by stating that a herniated disc at C3-C4 that he observed on the MRI scan was objective evidence of an injury, Dr. Betton further stated that the herniation was pre-existing. Thus, his conclusion was not contradictory. Essentially, the Commission weighed the evidence and assigned greater probative value to the opinions of these two physicians. Given this resolution, we conclude that there was a substantial basis for the denial of benefits. *See Liaromatis v. Baxter County Reg’l Hosp.*, 95 Ark. App. 296, ___ S.W.3d ___ (2006) (holding that there was no objective evidence of an injury where tests showed that the condition of the claimant’s spine was “virtually unchanged” from the condition diagnosed by previous tests).

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.